

Collective punishment in the Indian-administered Kashmir

India violating the prohibition of collective punishment

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On 19th May 2020, Indian security forces [destroyed](#) at least fifteen houses during a military operation against two separatist militants in Kashmir. This destruction of houses is merely a part of the larger pattern of 'collective punishments' carried out in the Indian-administered Kashmir. In this blog post, the author argues that the Indian government's recent security measures and policies in Kashmir violate the prohibition of collective punishment and therefore breach India's obligation under Customary International Humanitarian Law (CIHL) and International Human Rights Law (IHRL).

On 5th August 2019, the Indian Government [revoked Article 370 of the Indian Constitution](#), a 70-year-old provision which had given autonomy to the State of Jammu and Kashmir. The revocation was undertaken without any democratic consultation or discussion with the people of Kashmir. The overnight decision to remove Article 370 [dismantled](#) the last remaining provisions of constitutional protections for the Kashmiri residents, which include privileges over government jobs, scholarships, exclusive ownership and possession of land in the State of Jammu and Kashmir.

Subsequent to the abrogation, the Indian Government [imposed](#) an absolute and indefinite shutdown of phones and internet services along with a ban on trade and movement of the people in the Indian-administered Kashmir. The complete blackout of information and subsequent clampdown on the people of Kashmir was followed by [large-scale arrests and detentions](#) of protestors, political leaders, separatist leaders, human rights defenders and journalists. These security measures and policies are reminiscent of collective punishments employed by oppressive state structures. The Indian legal academia has still been reluctant to address the increasingly dangerous pattern of collective punishments carried out in the Indian-administered Kashmir.

The increasing state policy of collective punishments in the Indian-administered Kashmir

Indian-administered Kashmir is one of the most militarized zones in the world as well as the largest region occupied with an active 500,000- 700,000 security personals. During the span of the last three decades there has been a persistent internal armed conflict between Indian armed forces and non-state armed groups, which [advocate](#) the right to self-determination and independence for the people

of Kashmir. The Indian Armed Forces [committed largescale human rights abuses](#) such as extra-judicial killings, enforced disappearances, torture, sexual violence, arbitrary detentions, etc. Nonetheless, the Indian Government's policies to perpetrate collective punitive measures in the Kashmir region came as a surprise.

In April 2019, the Indian Government [banned the civilian vehicular movement](#) in the 270-kilometre stretch from Udhampur to Baramulla districts of National Highway 44 in Kashmir. The ban was imposed every Sunday and Wednesday to ensure the smooth travelling of security convoys and equipment necessary for the militarized zones. Despite of multiple already existing security checkpoints and stoppages of civilian vehicles, the complete ban on vehicular movement [had a harsh and punitive impact](#) on the day-to-day lives of Kashmiris, particularly on the essential services such as health, education, trade, business, public transportation and other low-income employments.

On 5th August 2019, the Indian Government went one step further and introduced what could be called a textbook example of collective punishment in the Indian-administered Kashmir. In the wake of the abrogation of Article 370, the Indian Government imposed an indefinite and complete lockdown in the State of Jammu and Kashmir, which restricted all forms of human activity for the 8 million people residing in Kashmir. Subsequently, the Indian Government [imposed a shutdown](#) of the internet services and phone communication in Kashmir, making it impossible to seek, access, impart and disseminate opinion or information from Kashmir. Justifying these acts, the government administration argued that the internet services could be used by militants for unlawful activities and that there is a dire need to prevent large-scale violent protest in the Kashmir Valley, especially in the wake of the abrogation of Article 370. These recent measures imposed by the Indian Government – the 'highway ban', the 'internet blockade', and the 'punitive house destructions'- violate the prohibition of collective punishment enshrined in CIHL and IHRL.

Violation of international humanitarian law

Collective punishment is [defined as](#) 'a form of sanction imposed on a person or group of persons in response to the crimes committed or alleged to be perpetrated by one of them'. The primary purpose of the prohibition of collective punishment is to prevent the state from terrorizing and subjugating the local population. The prohibition of collective punishment has been dealt with more comprehensively in International Humanitarian Law (IHL) than in IHRL. IHL [contains](#) an absolute prohibition of collective punishment for International Armed Conflicts (IAC) as well as Non-International Armed Conflicts (NIAC).

Legal scholars, who have been studying the three decade long armed conflict in Kashmir unanimously agree that the internal armed conflict between the Indian Armed Forces and non-state armed groups fighting for the Kashmiri's right to self-determination can be [classified as NIAC](#). The ongoing conflict in Kashmir satisfies the two-prong test formulated in [Prosecutor v. Tadic](#), i.e 'protracted armed violence' and an 'organized structure' of non-governmental groups, in order to characterize as NIAC. Firstly, there are multiple non-state armed groups operating

in the Kashmir region. Some of these non-state armed groups, specifically the Jammu Kashmir Liberation Front (JKLF), are the consequence of civil uprisings generated from the perceived continuity of an [illegitimate and illegal Indian rule](#) over Jammu and Kashmir. By 1994, the JKLF [renounced the armed struggle](#) for the independence of Kashmir and transitioned to continue their struggle through non-violent methods. However, there are non-state armed groups such as Hizbul Mujahideen and Jaish-e-Mohammed, which are still operating in Kashmir. These non-state armed groups have continuously engaged in 'protracted armed violence' against the Indian Armed Forces. The heavily [armed attack](#) on the military camp of Uri Town in 2016 and an [IED bomb blast](#) that was carried out against a convey of military vehicles in Pulwama in 2019, are some of the few examples that satisfy the legal essentials of 'protracted armed violence'. Moreover, a total number of 159 non-state armed militants and 129 armed forces [were killed](#) during the conflict in 2019 alone. Secondly, the non-state armed groups such as Hizbul Mujahideen and Jaish-e-Mohammed satisfy the 'organization' criterion. These non-state armed groups [possess a command structure](#), the ability to [recruit new members](#), and have access to high-grade military weapons in the Kashmir region. Most importantly, they have conducted and [coordinated military operations](#) against Indian state forces. Thus, the existing armed conflict between Indian government forces and non-state armed groups satisfies the threshold to classify as NIAC and results in the application of CIHL and the enshrined prohibition of collective punishment.

Violation of international human rights law

Although there is [no explicit prohibition of collective punishment in IHRL](#), human rights norms recognize that policies or decisions with the aim to inflict punitive measures on a person or group of persons without any personal liability, unequivocally infringe fundamental principles of human rights. Moreover, [General Comment No. 29](#) on Article 4 of the ICCPR (Derogations during a State of Emergency), has categorically stated that no circumstances shall justify the invocation of collective punishment, even in the midst of a state of emergency.

The combined and overall effect of the recent Indian security measures infringes the human rights of the Kashmiri people. The security measures and policies severely deprive of and violate the right to inherent dignity (Article 10 ICCPR), the right to liberty of movement (Article 12 ICCPR), freedom of speech and expression (Article 19 ICCPR), access and enjoyment of health care services (Article 12 ICESCR), the right of education (Article 13 ICESCR) and other socio-economic rights. The security measures [per se fail to satisfy](#) the 'four-part test' of the proportionality doctrine, which would need to be fulfilled in order to justify the restrictions as 'reasonable and legitimate'.

Since the internet services have become a central and indispensable means of exercising the freedom of speech and expression guaranteed under IHRL, the complete shutdown of the internet services in Kashmir by the Indian Government infringes the freedom of speech and expression. The internet is almost synonymous for exercising the freedom of speech and expression for the Kashmiri people. This especially holds true in the context, wherein Indian mainstream media [is reluctant to](#)

[publish information](#), opinion, or truth regarding the human rights abuses occurring in Kashmir, as this is contrary to the interest of the military establishment.

Furthermore, the collective punitive measures are imposed with an intention to inflict humiliation and deny the inherent dignity of the targeted Kashmiri people. The security measures that are aimed at denying any form of protest, dissent or basic freedoms against the oppression, undoubtedly violate the inherent dignity guaranteed under Article 10 of the ICCPR. The security measures are also discriminatory in nature because such measures have solely been directed against Kashmiri people by reason of their ethnic and religious identity. There are similar attacks carried out by the non-state armed groups in other parts of India (especially [Naxal Attacks in Chhattisgarh State](#), India). Yet, the Indian Government has never proposed punitive measures such as an internet ban in Chhattisgarh State. Besides that, the security measures have created a status quo that by default denies equal access to health care services, access to education, right to livelihood and other social economic rights guaranteed in the ICESCR.

The failure of the Indian judicial institutions to protect the Kashmiri people from collective punishment

There is a complete failure to prevent the institutionalization of collective punishment in Kashmir. The Supreme Court of India in [Anuradha Basin v Union of India](#), ruled that the blanket prohibition of the internet services shall violate the right to freedom of speech and expression. However, instead of ruling that the shutdown of the internet services is disproportionate, illegal and unconstitutional, it rather deferred the authority to the executive organs. The Court held that the executive should decide what kind of restrictions complying with the proportionality doctrine should be in place in Kashmir. Since the pronouncement of the judgment, four months have been passed, yet the Indian Government has still not allowed 4G internet services in the Kashmir valley – even in the midst of the Covid-19 pandemic.

The recent [judgment of the Supreme Court of India on 12th May 2020](#), clearly shows that ‘apologist mindset’ of the Constitutional Court. Despite, the Supreme Court judges knowing about the impact of denying 4G internet services on the equal access to healthcare in Kashmir, particularly during a pandemic, they still chose to defer the matter to the executive. Thereby they granted the executive the authority to decide whether the 4G services should be restored in Kashmir. I hopefully conclude that the Supreme Court may realise that the cost of bequeathing legal legitimacy for the practice of collective punishment in Kashmir shall be equal to deserting the constitutional duty to enforce and protect the fundamental rights of the Kashmiri people.

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